

June 26, 1953

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ARIZONA ATTORNEY GENERAL

Mr. James R. Burger,  
Deputy State Land Commissioner,  
State Land Department,  
Phoenix, Arizona.

Dear Mr. Burger:

In your letters of April 24, 1953 and April 27, 1953, you have posed two separate questions for opinion. The first question as to when a well has been completed, under the terms of Section 2 (a) of Chapter 42, Twenty-First Legislature, First Regular Session, is included in both letters and for purposes of this letter, will be combined.

After considering the law in connection with your first question, we are of the following opinion: the statute in question is apparently unique and under the circumstances it would be futile to use prior decisions of this or of any other jurisdiction as precedent in arriving at a definition of the word "completed" as used in this Act. Considering this fact, it becomes necessary for us to look strictly to the Act itself to guide us. The portion of the law in question, appears in the latter part of Section 2 (a) immediately following a description of the land area covered by the Act; this portion reading as follows:

" \* \* \* or unless such land is covered under valid drilling permits for wells which have been completed prior to the effective date of this Act; whether such lands have been cultivated or not;" (Emphasis supplied)

In arriving at a meaning of the word "completed" as used therein, we next refer you to Section 4 (a), the last portion thereof reading as follows:

" \* \* \* and the owner of said land shall have three months in which to complete the drilling of said well. Said permit shall expire at the end of three months, but the state land commissioner, upon good cause shown, may extend said permit for an additional period of three months." (Emphasis supplied)

It is our opinion that the fact that the Legislature used the words "complete the drilling", that it was the intention, in the absence of a showing to the contrary in the law, to mean that a well would be considered completed at the time the drilling had been finished and the rig moved off. This opinion is opposed to the position that a well must have a pump thereon and be pumping water in order to be considered completed.

Your second problem, as set out in your letter of April 24, 1953, is based on the following fact situation:

"An irrigation well was drilled and completed on May 25, 1951 in an area which was declared critical by the Land Commissioner on June 19, 1951. At the time of drilling the well, notice of intention to drill was filed with this office. However, the well was never registered nor was a well driller's report filed with this office as required under the 1945 ground water law. The well has never been pumped nor has any cultivation taken place on the land to date although there has been some clearing of the land in question. The well was drilled to an approximate depth of 500 ft. and the well rig moved off of the land."

The question being, can the well so described be considered a well covered by a valid drilling permit, which was completed prior to March 18, 1953. It is our opinion that this well might not be considered such a well for the following reasons: to begin with, the land to be irrigated has not been cultivated within five years prior to the effective date of this Act. This fact forces the owner to show that he is within the two exceptions set forth in the Act. It is obvious that he could not come under a well substantially commenced under Section 4, because this section only applies to lands in the restricted area lying outside of the critical area. The second exception applies to completed wells under valid drilling permits. It is our opinion that the well in question would qualify under this exception. We base this on the fact that the well was located in an area outside of the critical area, where it would be impossible for the owner to obtain a permit. Considering this situation, it would logically follow that a person who had complied with the law in force at the time of drilling would be in the position of a person with a valid permit under this exception.

We hope that this will clarify these points for you.

Yours very truly,

ROSS F. JONES  
The Attorney General

ROBERT W. PICKRELL  
Assistant to the  
Attorney General

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